

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**DAVID CALDWELL,**

**Plaintiff,**

**v.**

**9:19-CV-673  
(TJM/ATB)**

**C.O. KUSMINSKY, *et al.*,**

**Defendants.**

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**THOMAS J. McAVOY,  
Senior United States District Judge**

**DECISION and ORDER**

**I. INTRODUCTION**

This *pro se* action brought pursuant to 42 U.S.C. § 1983 was referred to the Hon. Andrew T. Baxter, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). In his February 7, 2022 Report-Recommendation (Dkt. No. 52), Judge Baxter recommends that defendant C.O. Kusminsky's motion for summary judgment (Dkt. No. 49) be GRANTED, and that the complaint be DISMISSED IN ITS ENTIRETY FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES. *Id.* at 13. Plaintiff has filed no objections to the Report-Recommendation, and his time to do so has passed.

**II. DISCUSSION**

After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice.

**III. CONCLUSION**

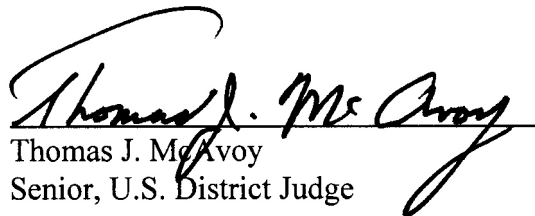
Accordingly, the Court **ACCEPTS** and **ADOPTS** the Report-Recommendation (Dkt. No. 52) for the reasons stated therein. It is therefore

**ORDERED** that defendant C.O. Kusminsky's motion for summary judgment (Dkt. No. 49) is **GRANTED**, and that the complaint is **DISMISSED IN ITS ENTIRETY FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES**.

The Clerk may close the file in this case.

**IT IS SO ORDERED.**

Dated: March 31, 2022

  
Thomas J. McAvoy  
Senior, U.S. District Judge